

UNITED STATES OF AMERICA  
and the STATE OF WISCONSIN,

y.

Defendants.

The Honorable Lynn Adelman

Upon consideration of Motion of Defendant P.H. Glatfelter Company for a Case Management Order, and any response thereto, the Motion is hereby **GRANTED**.

1. a. Defendants P.H. Glatfelter Company and WTM I Company shall file an answer to the complaint within fourteen (14) days of the date of this Order, and shall serve a copy upon each other party in accordance with the Federal Rules of Civil Procedure.

b. No party shall amend the pleadings or join any other party to this action, nor shall any party assert any counterclaim, cross-claim, or third-party claim without leave of Court, until the Court issues an Order resolving (i) whether plaintiffs have proven that defendants are responsible parties within the meaning of 42 U.S.C. § 9607(a), for response actions downstream of OU1 due to releases or threatened releases of hazardous substances “from OU1” and (ii) defendants’ affirmative defense that a reasonable basis exists to apportion defendants’ shares of any such liability.

c. The time allowed for amending the pleadings, joining additional parties, and asserting counterclaims, cross-claims, and third-party claims under any applicable Federal or Local Rule of Civil Procedure is hereby stayed until further Order of the Court.

2. a. Discovery in this matter shall be limited initially to information regarding (a) defendants' liability for injunctive relief arising from releases "from OU1" and (b) defendants' affirmative defense that any such liability is apportionable.\*

b. No later than twenty-one (21) days after the date of this Order, the parties shall meet and confer to establish a schedule for disclosing the information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure. Information must be disclosed pursuant to this subparagraph to the extent it bears on either of the two issues identified in Paragraph 2.a. of this Order.

c. Discovery on any other claim or issue is hereby stayed until further Order of the Court.

3. All requests for discovery shall be served by a date sufficiently early so that all discovery in this case can be completed no later than April 25, 2008.

4. a. i. Each plaintiff shall designate any expert witnesses that it intends to call at trial on the question of defendants' liability for injunctive relief to do work downstream of OU1 arising from releases "from OU1" and shall provide defendants with an expert report for each expert witness pursuant to Civil L.R. 26.1 no later than March 21, 2008.

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\* The Court intends to use the term "apportionable" in its technical sense as distinct from, and *not* synonymous with, "allocable." When a reasonable basis for apportionment exists, defendants are not jointly and severally liable under CERCLA. When no such basis exists, defendants are jointly and severally liable, but on a contribution claim, a court may allocate those costs using such equitable factors as it deems appropriate. 42 U.S.C. § 9613(f)(1).

ii. Each defendant shall designate any expert witnesses that it intends to call at trial in its affirmative case on apportionment and shall provide the plaintiffs with expert reports pursuant to Civil L.R. 26.1 no later than March 21, 2008.

b. Any responsive expert report shall be served by April 11, 2008.

c. Any expert discovery on an issue other than those identified in Paragraph 4.a. of this Order is hereby stayed until further Order of the Court.

5. Any discovery motions brought pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure must comply with Civil L.R. 37.1, by including:

a written statement by the movant that, after personal consultation with the party adverse to the motion and after sincere attempts to resolve their differences, the parties are unable to reach an accord. The statement must also recite the date and time of such conference and the names of all parties participating in it.

6. a. On or before May 12, 2008, all dispositive motions shall be served and filed.

b. All summary judgment motions and briefing thereon must comply with Civil L.R. 7.1 and 56.2.

7. On July 1, 2008, at 1:30 p.m., a final pretrial and settlement conference regarding the issues identified in Paragraph 2 of this Order only, will be held in Room 364 of the United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin, pursuant to Civil L.R. 16.2.

8. This case will be called for trial on the issues identified in Paragraph 2 of this Order on \_\_\_\_\_, 2008.

9. The court expects counsel to confer and to make a good faith effort to settle the issues identified in Paragraph 2 of this Order.

10. Discovery and trial on any issue other than those identified in Paragraph 2 of this Order is stayed until further Order of this Court.

**SO ORDERED** at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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LYNN ADELMAN  
District Judge



Of Counsel:

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\*Applications for admission are pending for Messrs. Weiss, Davies and Varnum and Ms. Simon. Each is admitted to practice before the courts of the Commonwealth of Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

Dated: November 20, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 20th day of November, 2007, a true and correct copy of the foregoing Motion of Defendant P.H. Glatfelter Company for a Case Management Order was filed electronically via the Electronic Court Filing system and is available for viewing and downloading. In addition, a true and correct copy was served via first-class mail, postage prepaid, upon the following:

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